Supreme Court, U.S.
FILED
APR 16 1992
OFFICE OF THE CLERK

(2)

No. 91-1486

In The

Supreme Court of the United States

October Term, 1991

JACQUELINE ISAACS,

Petitioner,

v.

JAMES C. WALKER, JR.,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION

DANIEL L. SHEA
BRAULT, GRAHAM, SCOTT & BRAULT
101 South Washington Street
Rockville, Maryland 20850
(301) 424-1060

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

15

QUESTIONS PRESENTED FOR REVIEW

In an effort to comply with Rule 15 of the Rules of the Supreme Court regarding what issues are properly before the Court if certiorari were granted, the Court is advised that the questions presented by the petitioner before the United States Court of Appeals for the Fourth Circuit are different than the questions presented to this Court.

So that the Court can be advised as to the statement of the issues which the petitioner presented to the United States Court of Appeals, those issues are set forth as follows from petitioner's brief before the Fourth Circuit:

> (1) Whether the trial court properly interpreted the jury verdict?
>
> (2) Whether the trial court committed reversible error when it denied the plaintiff's motion for a new trial, and when it failed to weigh the evidence but merely ruled on the sufficiency of the evidence?
>
> (3) Whether the trial court abused its discretion when it denied the motion of the plaintiff for a new trial?
>
> (4) Whether the verdict for the defendant was based upon sufficient evidence?

The statement of issues presented by respondent before the United States Court of Appeals for the Fourth Circuit was phrased as follows:

> Whether the trial court clearly abused its discretion in denying the motion for a new trial on the ground that the verdict was against the weight of the evidence?

QUESTIONS PRESENTED – Continued

In addition, the Court is advised that counsel for petitioner at the trial level did *not* object to any of the instructions to the jury. This is pointed out because the first question presented by petitioner to this Court appears to be challenging the trial court's jury instructions.

It is respectfully submitted that the only possible issues which could have been raised in this appeal are limited to issues raised by petitioner before the United States Court of Appeals for the Fourth Circuit. It is further respectfully submitted that the questions presented by the petitioner to this Court differ materially from the issues raised below. Respondent respectfully objects to petitioner's insertion of new and different issues at this stage of the proceedings.

TABLE OF CONTENTS

Page

Questions Presented for Review i

Table of Contents iii

Table of Authorities iv

Jurisdiction 1

Statement of The Case 1

Summary of Argument 4

Argument 6

Conclusion 10

TABLE OF AUTHORITIES

Page

CASES

B.N. v. K.K., 312 Md. 135, 538 A.2d 1175 (1988) 10

City of Los Angeles v. Heller, 475 U.S. 796 (1986) 8

Gill v. Rollins Protective Services Co., 773 F.2d 592, 595 (4th Cir. 1985) 9

Peroti v. Williams, 258 Md. 663, 267 A.2d 114, 118 (1970) 10

Poynter v. Ratcliff, 874 F.2d 219 (4th Cir. 1989) 9

Read Drug v. Colwill Construction Co., 250 Md. 406, 412-13 (1968) 10

Rice v. Sioux City Memorial Cemetery, Inc., 349 U.S. 70, 74 (1955) 8, 9

Southern Power Co. v. North Carolina Public Service Co., 263 U.S. 508 (1924) 6

Taylor v. Home Insurance Co., 777 F.2d 849, 855 (4th Cir. 1985) 9

STATUTE

28 U.S.C. 2101 (c) 1

RULES

Supreme Court Rule 14.5, 28 U.S.C.A. 5, 6

Supreme Court Rule 15, 28 U.S.C.A. i

JURISDICTION

The jurisdiction of this Court vests by reason of 28 U.S.C. 2101 (c).

The decision of the Court of Appeals for the Fourth Circuit was rendered November 15, 1991. The petition for rehearing and suggestion for rehearing in banc was denied on December 16. 1991.

STATEMENT OF THE CASE

In an effort to address perceived misstatements of fact and/or omissions of fact in the petition, the following information is provided:

This motor tort diversity action arose from an intersectional collision. Following a two and one-half day trial to a jury, a general verdict for the respondent resulted. The petitioner filed a motion for a new trial on the ground that the verdict was against the weight of the evidence. That motion was denied by the trial judge and an appeal to the United States Court of Appeals for the Fourth Circuit ensued.

The vehicular accident which is the subject of this appeal occurred on May 14, 1989 at the intersection of Philadelphia Avenue and Piney Branch Road in Montgomery County, Maryland. The topography of the area of the intersection is flat. Prior to the accident, the vehicle operated by petitioner was at a stop, the first vehicle in her lane at the intersection in the left hand turn lane of westbound Philadelphia Avenue. There were vehicles

stopped in the through lane of westbound Philadelphia Avenue immediately to her right.

Piney Branch Road, at its intersection with Philadelphia Avenue, when proceeding southbound in the direction of travel of respondent's vehicle, consists of three lanes: a left turn lane, and two through lanes. Before reaching the intersection, respondent was in the middle of these three lanes southbound on Piney Branch Road going toward the District of Columbia. A car was being operated to respondent's right and in front of his vehicle also traveling southbound on Piney Branch Road. As respondent approached the intersection, that car "cut" left in front of respondent's vehicle, causing him to take evasive action by going to his right to avoid colliding with the rear of that vehicle. At that point, the light for southbound Piney Branch Road was yellow. There was traffic at all four intersecting corners, and the traffic on both east and westbound Philadelphia Avenue was stationary. A vehicle and a bicyclist were on eastbound Philadelphia Avenue. Petitioner recalled the bicyclist, but was unable to remember other motor vehicle traffic on eastbound Philadelphia Avenue. Petitioner's testimony was inconsistent as to whether she waited for a minute or two, or a second or two, after the light facing her turned green before proceeding to make a left turn into the intersection onto southbound Piney Branch Road. The collision ensued, wherein the right front passenger side of petitioner's vehicle came into contact with the left rear and driver's side of respondent's vehicle.

The trial testimony was in conflict regarding the discussion that occurred at the scene after the accident. A Mr. Jackson, who was not an eyewitness to the accident,

and who had known the petitioner for five and one-half years before the accident, testified that respondent admitted at the scene to the investigating police officer that he had run a red light. Respondent denied making such a statement. Respondent recounted what occurred in his discussion with the police officer, after the accident, and no citation was issued to either driver. No ambulance was called and the parties left the scene.

The medical testimony was somewhat divergent. Petitioner claimed neck and back injuries resulting from this 1989 accident. She told her chiropractor, Dr. Descalzi, during his treatment of her that she did not recall striking any part of her body against any part of her vehicle in the 1989 accident. Moreover, Gregory Ford, M.D., an orthopedic surgeon, who was one of petitioner's treating physicians, testified when called by petitioner that there was nothing about his examination of petitioner's anatomy that provided a medical explanation for her continuing symptoms. He further testified that he could not say that this 1989 accident, as distinct from an earlier March 1985 accident in which petitioner had been involved, either caused her symptoms or had any permanent impact upon her, or upon any pre-existing condition that she may have had.

On March 31, 1985, petitioner had been in an automobile accident, not wearing a seat belt, when a car coming in the opposite direction from hers struck her car head-on. She was thrown forward in that accident and she reported to her treating physicians that she hit her chest and chin against the steering wheel. She testified that, in that accident, her vehicle was traveling at 25 mph

and that the vehicle that struck her was going 40 mph at the time of impact. Her vehicle was totaled.

At the trial below, petitioner testified that she did *not* make a claim for permanent injuries resulting from the 1985 accident. The evidence revealed, however, that she had, in fact, made such a claim; that she answered interrogatories under oath claiming permanent neck and back injuries; that she was hospitalized for 22 days, and missed work for more than 16 weeks, was confined at home for three and one-half months, and last missed work through January 21, 1988, following the March 1985 accident.

Thomas E. Hunt, M.D., an examining physician, expressed his view that there was nothing whatever that he had reviewed which suggested that petitioner sustained any injury of any consequence at the time of the May 14, 1989 accident. He testified that, in his opinion, there was nothing in petitioner's medical records or in his examination of her that would suggest she was likely to be left with any permanent impairment of her physical function as a result of the May 14, 1989 accident.

Finally, at the trial below, the jury was read petitioner's interrogatory answer where she responded, "according to my doctors, my injury is not an aggravation of a previous injury."

SUMMARY OF ARGUMENT

At the outset, it is respectfully submitted that the petitioner has failed to present with accuracy, brevity and

clearness that which is essential to a ready and adequate understanding of the points requiring consideration, as mandated by Supreme Court Rule 14.5. This failure is sufficient reason for denying the instant petition for a writ of certiorari. In addition, it is, of course, essential for a petition for a writ of certiorari to be granted, that there be special and important reasons in support thereof. This case presents no such special and important reasons for the granting of the petition. In that regard, the Court is advised:

(a) The decision in this case by the United States Court of Appeals for the Fourth Circuit is not in conflict with the decisions of the various other circuits. Parenthetically, the decision in this case consists of a one and one-half page, unpublished *per curium* opinion. It has no precedential value.

(b) There has been no showing of any departure from accepted or usual course of judicial proceedings as to call for the exercise of this Court's power of supervision.

(c) The United States Court of Appeals for the Fourth Circuit has not, by reason of the decision below, decided any important questions of federal law not settled by this Court. Nor is the decision of the United States Court of Appeals below one which decided any federal question which, in any way, conflicts with the applicable decisions of this Court.

(d) Because of the petitioner's failure to object to the jury instructions in the trial court,

any objections at this stage of the proceedings to the jury instructions are not properly before this Court.

(e) There is no public importance to the issues that are arguably raised by this case. The case concerns a private motor vehicular tort action, involving only these parties and presents no new, novel or otherwise important issue meriting consideration by this Court.

(f) Finally, the decision by the United States Court of Appeals for the Fourth Circuit is correct in any event.

This Court should not issue a writ of certiorari.

ARGUMENT

I. THE PETITION SHOULD BE DENIED BECAUSE OF PETITIONER'S FAILURE TO ACCURATELY, BRIEFLY AND CLEARLY PRESENT ESSENTIAL POINTS.

Supreme Court Rule 14.5, 28 U.S.C.A., provides:

> The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be sufficient reason for denying the petition.

In *Southern Power Co. v. North Carolina Public Service Co.*, 263 U.S. 508 (1924), this Court dismissed a writ as improvidently granted when it developed that this Court was ultimately being asked to decide a question of fact concerning the sufficiency of evidence. 263 U.S. at 509.

Pointing out the impossibility of requiring this Court to critically examine the record before ruling on a petition for certiorari, the Court explained the need for clear, definite, and complete disclosures concerning a controversy when applying for certiorari. *Id.*

The petition here is not accurate, complete, definite, brief or clear. By way of example, it sets forth extraneous matters which were not in evidence at the trial below (e.g., defendant's Answer to Interrogatories at pages 96a – 104 of the petition). The petition is incomplete in that it fails to mention that petitioner's counsel, when specifically asked by the trial judge whether he had any exceptions or requests for additional jury charges, advised the trial judge that he had no exceptions and offered no additional charges. The petition fails to mention that one of petitioner's own treating physicians testified that there was nothing about his examination of petitioner that provided a medical explanation for her symptoms. Finally, it is submitted that the petition herein does not rise to any level of clearness, much less clearness essential to a ready understanding of the points sought to be raised for consideration. With all due respect to counsel, the "Questions Presented" section of the petition consists of incoherent, run-on sentences that are simply not comprehensible.

II. THIS CASE PRESENTS NO SPECIAL OR IMPORTANT REASONS FOR REVIEW.

Before this Court will exercise its judicial discretion and grant review by way of a writ of certiorari, there must be "special and important" reasons therefor. As

Justice Frankfurter observed in *Rice v. Sioux City Memorial Cemetery, Inc.*, 349 U.S. 70, 74 (1955),

> "Special and important reasons" imply a reach to a problem beyond the academic or the episodic.

No "special and important" reasons exist for the issuance of a writ of certiorari in this case. The unpublished decision by the Fourth Circuit has not been shown to be in conflict with the decisions of this Court. The decision in *City of Los Angeles v. Heller*, 475 U.S. 796 (1986) affords no basis for this petition. Petitioner's assertion that the trial court "violated the teachings" of *Heller* is not well founded. *Heller* observed that because appellate courts assume that juries act in accordance with the instructions given them and do not consider and base their decisions on legal questions with respect to which they are not charged, an argument that a jury may have reached a decision because of a theory of law about which they were not instructed was "unavailing". 475 U.S. at 798.

The facts in this case are such that the jury was properly instructed on the law of negligence and returned a general verdict for the respondent. There was no objection by petitioner's counsel to the instructions given, and no request was made for additional instructions. The jury here acted in accordance with the instructions given them. Petitioner's dissatisfaction with the jury's verdict, with the trial judge's denial of a motion for a new trial on the basis that the verdict was against the weight of the evidence, and with the Fourth Circuit's affirmance of that ruling, affords no special and important reason for this Court to review this case.

The petition here has not shown that the decision by the Fourth Circuit is in conflict with the decisions of any other United States Court of Appeals. It has not shown any departure from the accepted and usual course of judicial proceedings, or the sanctioning of any such departure. Thus, there is no need for this Court to exercise its power of supervision. No important question of federal law has been decided by the United States Court of Appeals. This Court does not " . . . sit for the benefit of the particular litigants," *Rice v. Sioux City Memorial Cemetery, Inc.*, 349 U.S. 70, 74 (1955) but only where special and important reasons exist. Because of the absence of any such reasons arising out of this automobile negligence action, this petition should not be granted.

III. THE PETITION SHOULD BE DENIED BECAUSE THE COURT OF APPEALS' DECISION IS CORRECT IN ANY EVENT.

It is well settled that when ruling on a motion for a new trial, the District Court has authority to weigh the evidence and to assess the witnesses' credibility and its ruling on any such motion will be reversed only for a clear abuse of discretion. *Taylor v. Home Insurance Co.*, 777 F.2d 849, 855 (4th Cir. 1985); *See also Poynter v. Ratcliff*, 874 F.2d 219 (4th Cir. 1989); *Gill v. Rollins Protective Services Co.*, 773 F.2d 592, 595 (4th Cir. 1985).

The trial judge below found that there was no reason to grant a new trial. In so holding, he observed that there was significant expert testimony tending to show that the petitioner had suffered no compensable personal injury arising from the motor tort. Observing that damages are a

necessary element of negligence under Maryland law, and citing to *Read Drug v. Colwill Construction Co.*, 250 Md. 406, 412-13 (1968), the trial judge ruled that the jury's verdict should stand. *See B.N. v. K.K.*, 312 Md. 135, 538 A.2d 1175 (1988) (actual injury is an element of negligence); *Peroti v. Williams*, 258 Md. 663, 267 A.2d 114, 118 (1970) (actual loss or injury to the plaintiff proximately resulting from defendant's conduct is among the basic elements necessary for a cause of action in negligence).

There was no showing of any abuse of discretion by the trial judge in denying petitioner's motion for a new trial. Absent a showing of a clear abuse of discretion, which does not exist under the facts of the present case, there was no error committed by the trial judge. The trial court's decision was correct under well established principles of tort law.

CONCLUSION

There have been no special and important reasons demonstrated as to why the petition should be granted. Neither the jury's verdict nor the trial judge's ruling on the motion for a new trial were in error. Accordingly, the petition seeking a writ of certiorari should be denied.

Respectfully submitted,

DANIEL L. SHEA
BRAULT, GRAHAM, SCOTT & BRAULT
101 South Washington Street
Rockville, Maryland 20850
(301) 424-1060

Counsel for Respondent